

Southwestern Bell

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July 25, 1997

Durward D. Dupre
Vice President
Associate General Counsel

Ms. Chris Jines
Director-Federal Regulatory
SBC Communications Inc.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Chris:

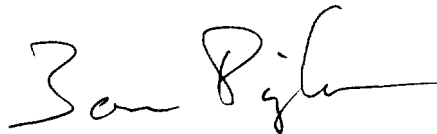
Re: Application for Review of Southwestern Bell Telephone Company,
Pacific Bell and Nevada Bell, CC Docket No. 97-149

Enclosed please find an original and four (4) copies of the above-referenced pleading to be filed with the Secretary of the Commission on Monday, July 28, 1997. Also enclosed is a copy of the pleading to be file-stamped and returned to me.

Additional copies of the pleading are attached to be used as the courtesy copies and one is included for your files.

Please call to confirm that the pleading has been filed. Thank you for your assistance.

Very truly yours,



/s/ Durward D. Dupre

One Bell Center
St. Louis, Missouri 63101

Enclosures

Phone 314 235-4300

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of
1997 Annual Access Tariff Filings

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CC Docket No. 97-149

APPLICATION FOR REVIEW OF
SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL AND NEVADA BELL

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell, (collectively, the SBC Companies), hereby request that the Federal Communications Commission (Commission) review the Memorandum Opinion and Order released June 27, 1997 in the above-styled matter. For the reasons stated in this application, the SBC Companies respectfully request that the Commission immediately vacate the Memorandum Opinion and Order as to the SBC Companies and allow the SBC Companies' tariffs to take effect as originally filed with a "deemed lawful" status.

I. BACKGROUND

Pursuant to the 1997 TRP Order,¹ LECs were required to file their 1997 annual interstate access tariffs on June 16, 1997. Petitions against these filings were scheduled to be due on June 23, 1997. This Order also established that the local exchange carrier (LEC) replies were due on June 27, 1997. Under this schedule, LECs filed their tariffs on June 16, 1997. On June 23, 1997, the scheduled day for petitions to be filed, the SBC Companies received the AT&T petition late that evening. The MCI Petition was not received until the following day. Thus, under the schedule

¹Material to be filed in support of 1997 Annual Access Tariffs, Tariff Review Plans, DA 97-593, released March 21, 1997, Attachment 2, (1997 TRP Order) (establishing pleading cycle).

established by the 1997 TRP Order, the SBC Companies only had a portion of June 24 and the remainder of June 25 and 26 in order to construct their replies for filing on June 27.

Notwithstanding this short schedule and the failure of both AT&T and MCI to serve their petitions on the SBC Companies by the close of business on June 23, the Common Carrier Bureau (Bureau) issued an Order Modifying Deadline on June 25, 1997. This Order advanced the SBC Companies' filing date for replies to the petitions to June 26, 1997 instead of June 27, 1997.

Pursuant to the Order Modifying Deadline, the SBC Companies filed their replies on June 26, 1997 at the close of business. On June 27, 1997, the Bureau issued a Memorandum Opinion and Order that suspended for one day and set for investigation the SBC Companies' 1997 annual access tariff filings. The Memorandum Opinion and Order does not acknowledge or address the SBC Companies' claim (as detailed in their reply comments) that their due process rights were violated.

II. THE SBC COMPANIES DUE PROCESS RIGHTS WERE VIOLATED.

A combination of events under the purview of the Bureau has served to violate the SBC Companies' constitutional rights. First, the Bureau took no action with regard to MCI's and AT&T's comments being served in an untimely manner and not in accordance with the Commission's rules for streamlined tariff filings.² The SBC Companies' reply comments reported that AT&T's petition was faxed to the SBC Companies after the close of the business day (at 9:06 p.m.) on June 23 and MCI's Petition was faxed to the SBC Companies one day after the Commission's rules require on June 24, 1997. Parties must not be permitted to ignore the Commission's rules, thereby reducing the time for the SBC Companies to respond to these petitions. The detrimental effect to the SBC

² See, Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, (released January 31, 1997) (FCC 97-23).

Companies was compounded by the Bureau's Order Modifying Deadline, which in the middle of the already brief response period, decreased by one day the time for the SBC Companies to respond to the petitions.

Under the 1997 TRP Order, the SBC Companies were allotted four days in which to respond to the petitions filed against the 1997 annual access charge tariff filings. In practice, the Bureau's actions decreased the time from four days to only two.

The harm to the SBC Companies was compounded when the Memorandum Opinion and Order completely failed to acknowledge or address, the detrimental effect of the abbreviated filing period on the SBC Companies' reply comments. Even though the SBC Companies objected to the late filed petitions, and the reduction of the filing period caused by the Order Modifying Deadline, these arguments were not addressed by the Bureau.

At a minimum, these arguments must be considered and ruled upon. The only effective remedy, however, for the harm caused to the SBC Companies, is to immediately allow their tariffs as filed to take effect with a "deemed lawful" status. This remedy is the only one which would eliminate any prejudice to the SBC Companies from the denial of their constitutional due process rights.

Pursuant to 47 C.F.R. Section 1.115(b)(2), the action taken by the Bureau in disregarding the SBC Companies' due process rights conflicts with the U.S. Constitution, Commission regulation, case precedent, and established Commission policy. Further, pursuant to Section 1.115(b)(2)(v), the action by the Bureau constituted "prejudicial procedural error."

It is impossible for the SBC Companies to gauge the effect caused by this violation of their rights. When notice was given of the Order Modifying Deadline, efforts to develop additional

arguments and to further research points in the reply comments were curtailed to meet the new objective of filing the reply comments a day earlier than planned. Had the SBC Companies' arguments been fully accepted by the Bureau, the result should have been to allow the SBC Companies' tariffs to take effect as filed with a "deemed lawful" status, pursuant to the streamlining rules.³ It is now impossible to determine whether the Bureau would have come to a different conclusion had the SBC Companies had the full four days. Thus, the only remedy is to vacate the Memorandum Opinion and Order and to allow the SBC Companies' tariffs to take effect with a "deemed lawful" status.⁴

³ See, Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996, CC Docket No. 96-187, Report and Order, (released January 31, 1997) (FCC 97-23).

⁴ The Order Modifying Deadline stated that "after the filing of the replies, the Bureau will release an Order determining the extent to which the LECs must revise their annual access filings . . ." (emphasis added) To avoid any possible appearance of prejudging the merits of the issues, the Order Modifying Deadline could have more clearly stated that: "after the filing of the replies, the Bureau may be required to release an Order determining the extent to which the LECs must revise their annual access filings . . ." (Under current Bureau practice, an Order is not needed if substantial questions of lawfulness do not exist, after review of all the pleadings. Public Notice (DA 95-2076) (September 29, 1995)).

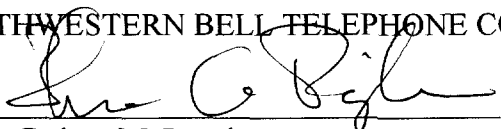
III. CONCLUSION

For the foregoing reasons, the SBC Companies respectfully request that the Commission vacate the Memorandum Opinion and Order, as to the SBC Companies and allow the SBC Companies' annual access tariff filings to take effect, as filed, immediately, with a "deemed lawful" status.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By


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ATTORNEY FOR PACIFIC BELL
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July 28, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "APPLICATION FOR REVIEW OF SOUTHWESTERN BELL TELEPHONE COMPANY, PACIFIC BELL AND NEVADA BELL" in Docket No. 97-149 has been filed this 28th day of July, 1997 to the Parties of Record.

A handwritten signature in cursive script that reads "Katie M. Turner". The signature is written in dark ink and is positioned above a horizontal line.

Katie M. Turner

July 28, 1997

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